

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

In re:

Michael Wayne Crawford

Debtor.

Case No. 10-13604-RGM

Chapter 11

U.S. TRUSTEE'S MOTION TO CONVERT OR DISMISS CHAPTER 11 CASE

Judy A. Robbins, the United States Trustee for Region 4, by counsel, moves this Court to convert this chapter 11 case to chapter 7, or in the alternative, dismiss the case. This court confirmed a plan from this debtor on February 12, 2013.

Section 1112(b)(1) of the Bankruptcy Code provides that the Bankruptcy Court shall convert a case to chapter 7 or dismiss the case if cause is established. Cause is established due to the following:

- Under § 1112(b)(4)(F) “cause” exists where “unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter.” The debtor has failed to file monthly operating reports for September 2012 through December 2012, and quarterly disbursement reports for the 1st quarter of 2013 through the 4th quarter of 2014. In addition, it has been over 700 days since the plan was confirmed and the debtor has not filed a final report or decree.

Therefore, based on the lack of filing these reports the case should be either converted to Chapter 7 or dismissed.

- Under § 1112(b)(4)(K) “cause” exists where there is “failure to pay any fees or charges required under chapter 123 of title 28.” Currently, the debtor owes \$649.72 in estimated chapter 11 fees for the 4th quarter 2014. This amount could be greater pending the disbursements reported from the missing monthly and quarterly reports. Based on this past due amount, the case should be converted to Chapter 7 or dismissed.
- Under § 1112(b)(4)(M) “cause” includes the “inability to effectuate substantial consummation of a confirmed plan.” Failure to file the aforementioned monthly and quarterly reports fails to provide proof that the debtor has made payments according to the approved plan. Failure to provide this proof is cause for conversion to Chapter 7 or dismissal of the case.

As the U.S. Trustee has established a *prima facie* case that causes exists to convert or dismiss this case, the burden shifts to the debtor to demonstrate that “unusual circumstances” exist to avoid the mandatory conversion or dismissal of his case. *See* 11 U.S.C. § 1112(b)(2); *In re Park*, 426 B.R. 811, 815 (Bankr. W.D. Va. 2010) (internal citations omitted)(“The moving party bears the initial burden of establishing a *prima facie* case that cause exists to dismiss or convert. Once a *prima facie* case establishing cause is made, then the burden shifts to the objecting party to either: (a) demonstrate that unusual circumstances exist that would that make dismissal or conversion unfavorable to the creditors or estate; or (b) establish that a plan will be confirmed and that the act or omission that forms the basis for the aforementioned cause to dismiss or convert will be cured within a reasonable period of time.”). The U.S. Trustee is unaware of any unusual circumstances that would result in a finding that either conversion or dismissal of this case is not in the best interest of the creditors of the estate.

WHEREFORE, the United States Trustee respectfully requests that this Court enter an order converting this case to a case under chapter 7 of the Bankruptcy Code or dismiss this case.

February 24, 2015

JUDY A. ROBBINS
U.S. TRUSTEE, REGION 4

By: /s/ Bradley D. Jones
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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2015, a true copy of this response was served on the following persons by first class U.S. mail, or by notice of electronic filing:

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